



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of )

Joseph G. Englert )

Serial No. 09/816,023 )

Filed: March 23, 2001 )

For: SYSTEM FOR RISK & COST )  
ANALYSIS IN FINANCING EXPORT )  
TRANSACTIONS )

Examiner: James M. Alpert

Group Art Unit: 3624

File No. 539P

Tiburon, California

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313

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ON June 13, 2006

THOMAS M. FREIBURGER, Reg. No. 27,063

SIGNED [Signature]

DATE 6-13-06

REMARKS

ON FILING OF REQUEST FOR CONTINUED EXAMINATION

This follows a telephone interview with Examiner James Alpert on June 13, 2006, and the courtesy of that interview is greatly appreciated. The Walker and Francis references were discussed in the interview, as against the claims of this application, particularly claim 1.

As pointed out to Examiner Alpert, the steps of claim 1 which culminate in the calculation of a total cost ratio are very important and unique. The cost ratio as it is defined in the

specification and claims is a unique tool for evaluating an export financing transaction and whether to go forward. The cost ratio reflects important factors including risk associated with the particular export financing transaction. See the structural and transaction costs, as defined in the specification and as outlined in Figure 9 of the drawings. If, for example, an export financing transaction involves export to a nation with political risk (where a payment could be prevented or substantially delayed), the letter of credit fee could be very high. This will cause the total cost ratio, which is the total structural costs and transaction costs divided by the total transaction amount, to be unusually high. This will constitute a strong indicator to the lender (or the exporter himself) to look more closely at the financing transaction and possibly not to go forward.

As explained to the Examiner, the total cost ratio as set forth in the claims and explained in the specification has nothing to do with profit margin. The Examiner's comments in the final rejection assumed that the calculation of the cost ratio would be the same as calculating a profit margin, but this is clearly not the case. The structural and transaction costs do not include all costs to the exporter, not even cost of manufacture or cost of acquisition of the goods to be exported. It is strictly a tool for analyzing the financing transaction, as an indicator of whether this export financing transaction makes sense and good judgment to proceed. There is absolutely no

analogy to the calculation of profit margin, nor is the goal similar.

The Examiner inquired as to whether this total cost ratio is unique in the industry, and the answer is YES. This ratio, as a tool to evaluate an export financing transaction, is unique to this invention and not known in the prior art.

The Walker patent deals with logistics, not structural or transaction costs relative to financing. These logistics relate to how to move goods from point A to point B while protecting oneself. This is controlled by what incoterms are applied. Walker is concerned with using the correct type of bill of lading, and all the logistical paperwork for the sale, all the documentation surrounding the sale itself. Walker puts this into a computer and tracks and sorts the data. Note that transaction costs, as defined in the specification and as part of the process of claim 1, are not concerned with freight, insurance, export licenses, etc., which are logistical matters.

Walker is concerned with logistical items and issues, and tracking and sorting those items. The current invention is concerned with the financing side of an export transaction, and evaluating the financing of an export transaction.

Walker is concerned with the ordinary course of a transaction in international trade, and looks at the obvious issues and expenses, including creation of documents, insurance, freight charges, bills of lading, and other documents and

expenses. Walker presents a way to track the ordinary course of an international transaction on a computer. Walker is not evaluating the financing costs of a transaction. Again, as noted in the specification and in Figure 9 of the drawings, these financing costs comprise structural costs and transaction costs, as defined. No prior art touches on the use of these items to arrive at a total cost ratio as in the claims.

Note that the cost ratio comprises the financing costs, structural and transaction, divided by the total invoice amount for the export transaction. This enables a lender to look at the total cost ratio and evaluate a transaction. For example, he may know from experience that about 3.2 percent to 4 percent is average cost ratio in terms of transactions he has financed in the past. When a proposed transaction calculates to about 7 percent (for example) as a cost ratio, the lender must take a hard look at this, review the risks, and decide whether to go forward or modify the transaction in some way.

Note that in an export transaction, a letter of credit normally needs to be confirmed by an American bank. In other words, the letter of credit is moved from the foreign bank to an American bank. If there is political risk with a particular country, the American bank might agree to go forward but only at a much higher cost on the confirmation of the letter of credit. The confirmation cost reflects the political risk or other risk factors. This is also true regarding credit insurance, as shown

in Figure 9. Thus, the cost ratio importantly reflects risk factors.

The arguments in the final rejection misconstrue the term "cost ratio". On page 8 of the action it is stated

However, the cost ratio is a statistical tool that is old and well known in the art. It would have been obvious to one of ordinary skill in the art at the applicant's invention was made to modify the teachings of Walker relating to a method for analyzing an export transaction to include the cost ratio. . . Walker. . . describes the importance of knowing all the cost involved in an export transaction, so as to ensure profitability. The cost ratios are critical to these determinations.

The above passage treats "cost ratio" as a simple profit margin, which it is not as clearly defined in the patent application. The Examiner plainly is speaking of different "cost ratios" in this passage from what is described and claimed.

Walker is not about financing costs in international export transactions, nor about analyzing these costs. Walker suggests nothing about structural and transaction financing costs as these costs are defined by the applicant. Walker certainly contains no suggestion whatsoever regarding the total cost ratio as defined in the claims. Although the Examiner in the interview suggested that Walker envelops quite a bit of subject matter, and that though the reference is concerned with different goals and purposes, that it might envelop the invention, the fact is that it does not. A careful look at Walker will confirm this. Walker fails to disclose the steps of the method or the elements of the

apparatus claims.

The Examiner's final rejection stated that paragraphs (c2) and (c3) of claim 1 are shown in the references, citing passages. This is particularly in regard to the Francis reference and the passages of that reference called out by the Examiner. Reviewing those passages (col. 6 and col. 11-12), neither Francis nor Walker discloses or suggests what is recited in paragraphs (c2) and (c3). For example, compare (c2) to Francis col. 6, l. 12-17, which has nothing in common with the words of (c2). (c2) requires that the user of the system enter information on a financial tool price sheet as to the structural cost and the transaction cost of using each of a plurality of pre-export tools included in the list of financial tools, and also a plurality of post-export tools listed on the list of financial tools, and for the user to determine lender revenue for each of the various alternatives. The attorney can find absolutely nothing in either reference having any relation to this method step. This is especially true since neither reference describes the structural cost and transaction cost as defined herein. Further, (c3) recites selecting appropriate financing tools for the transaction, pre-export and post-export, and entering projected structural costs and transaction costs on the solution worksheet as tentative costs for a course of action using the selected tools. Again, the references have nothing to do with this subject matter and clearly do not disclose or suggest this step,

which, like (c2), involves structural costs and transaction costs.

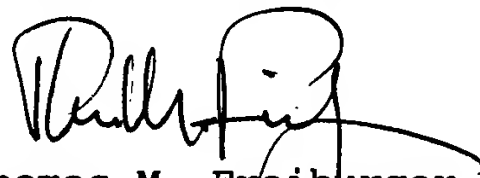
The applicant (in the specification) and the attorney have now explained why the Examiner's assumptions are mistaken regarding common knowledge of certain elements of the claims. It is requested (and required) that a reference be provided to support that features are found in the prior art.

In short, nothing in either of the references suggests the important steps of the invention, and neither in any way suggests arriving at a cost ratio as defined. Cost ratio has nothing to do with profit margin and it is a tool for evaluating a proposed financing transaction for export.

The described cost ratio is unique, has been found highly useful to clients in financing of export transactions, and cannot be assumed as having been used by others previously.

Claims 1 through 10 define a patentable invention and allowance of these claims is requested. If any issue remains, the Examiner is asked to telephone the undersigned attorney.

Respectfully submitted,



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